711, 46 Atl. 146, 50 L. R. A. 641; *Sturgis* v. *Crowninshield*, 4 Wheat. 122; *Harbaugh* v. *Costello*, 184 Ill. 110, 113, 56 N. E. 363, 75 Am. St. Rep. 147. But the decisions are in hopeless conflict as to the effect of excepting farmers from the operation of § 4b of the Bankruptcy Act, some holding that Congress intended to cover the whole field of his insolvent condition; *Parmalee Mfg. Co.* v. *Hamilton*, 172 Mass. 178, 180, 51 N. E. 529 (dictum); *Littlefield* v. *Gay*, 96 Me. 422, 52 Atl. 925; *In re Weedman Stave Co.*, 199 Fed. 948, 29 A. B. R. 460, others that its intention was "to leave the matter untouched, and therefore subject to the regulation of the states." *Old Town Bank* v. *McCormick*, 96 Md. 341, 352, 53 Atl. 934, 60 L. R. A. 577, 94 Am. St. Rep. 577; *Lace* v. *Smith*, 34 R. I. 1, 12, 82 Atl. 268, Ann. Cas. 1913, E. 945. The latter view, adopted in the instant case, is the weight of authority, following the statement of Justice MARSHALL in *Sturgis* v. *Crowninshield*, 4 Wheat. 122, that it is not the existence but the exercise of the power to establish a genuine bankruptcy law in conflict with state laws, which renders the latter inoperative. The courts agree that the express exclusion of all corporations but "manufacturing, trading, printing, etc.," from the operation of both § § 4a and 4b of the National Act does not as to them suspend the state laws. *Herron Co.* v. *Superior Court*, 136 Cal. 279, 282, 68 Pac. 814; *Dille* v. *People*, 118 Ill. App. 426. Hence as to this class Congress is said to have exercised its power. The court argues from this premise that Congress had no different intention as to farmers when providing that they could become voluntary bankrupts. The answer that "Congress intended to create a complete system of bankruptcy, and when it made certain exceptions it did so because it seemed wise that in such cases bankruptcy should not be permitted at all" (29 HARV. L. REV. 776) is too broad, if the decisions are correct as to the effect of expressly excepting certain classes of corporations from the operation of § 4. See generally 11 MICH. L. REV. 60; 22 HARV. L. REV. 776; REMINGTON, § § 1629-30.

BANKRUPTCY—WHEN IS RECORDING REQUIRED.—A mortgage given more than four months before bankruptcy was recorded within four months prior to the petition. The state statute required recording as against subsequent purchasers and lien creditors. *Held*, it was required to be recorded within the meaning of § 60a of the bankruptcy act so as to be voidable by the trustee under § 60b, all other elements of a voidable preference as defined by § 60a being present at the time of recording. *Bunch* v. *Maloney*, 233 Fed. 967 (C. C. A. 1916).

The District Court in the instant case, 225 Fed. 243, (prior to *Carey* v. *Donohue*, 240 U. S. 430, 36 Sup. Ct. 386), followed the previous rulings of the sixth, seventh and eighth circuits that a trustee may set aside a transfer recorded within the four months' period if recording is required as to anyone. *Carey* v. *Donohue* held that "the trustee could not under § 60b avail himself of a requirement exclusively in the interest of someone outside of the bankruptcy act [subsequent purchasers] and for whom he was not authorized to speak," but Justice HUGHES, in giving the opinion of the court, said that recording is "required" under § 60 if it is required "for the protection of

creditors—the persons interested in the bankrupt estate, and in whose behalf, or in whose place the trustee is entitled to act." The Circuit Court of Appeals in the instant case followed the decision of *Carey* v. *Donohue* and also affirmed the holding of the District Court, that when recording is necessary as against lien creditors, one of the classes represented by the trustee, (BANKRUPTCY ACT, § 47a), there is a "requirement" under § 60a. Though the case does not actually decide that recording is "required" under § 60 if it is required as against "a judgment creditor holding an execution duly returned unsatisfied" or a general creditor, the other classes represented by the trustees, nevertheless, since no local statute is likely to require recording against such creditors without also requiring it against a lien creditor, practically the holding is that "if recording is required as against any of the classes referred to in § 47a (2), there is a "requirement" under § 60. Justice HUGHES, in *Carey* v. *Donohue,* though citing *Meyer Drug Co.* v. *Pipkin Drug Co.* (C. C. A. Fifth), 136 Fed. 396, as reaching a "different conclusion" from that reached in the sixth, seventh and eighth circuits, which he overrules, cannot be said thereby to sanction the rule laid down by the fifth circuit that "whether and to what extent a chattel mortgage given before but recorded within the four months' period is valid against a trustee, must be determined exclusively by the state law." (Remington § 1383). The statute in that case is identical with the instant one and the decision, if it followed the dictum in *Carey* v. *Donohue* or the holding in the instant case, would be reversed. On this point generally, see 14 MICH. L. REV. 578.

BILLS AND NOTES—PROVISION FOR ATTORNEY'S FEES—NOT CONCLUSIVE AS TO AMOUNT.—A stipulation in a note for 10% attorney's fees is not conclusive as to the amount due for such services. In an action at law upon the note the amount of a reasonable attorney's fee is a jury question. *Farmer's and Mechanic's Bank of Florence* v. *Whitehead,* (S. C. 1916), 89 S. E. 657.

As to the validity of such stipulations in a note for attorney's fees the courts are in irreconcilable conflict. The apparent weight of authority holds them to be valid and enforceable. *Dorsey* v. *Wollf,* 142 Ill. 589; *Jones* v. *Radatz,* 27 Minn. 240; *First National Bank* v. *Larson,* 60 Wis. 206; *Stanley* v. *Farmers Bank,* 17 Kan. 592; *Bowie* v. *Hall,* 69 Md. 433. But in many jurisdictions such stipulations are void by statute: (*Hartford Security Co.* v. *Eyer,* 36 Neb. —; *Churchman* v. *Martin,* 54 Ind. 380); as an evasion of the usury laws, (*Boozer* v. *Anderson,* 42 Ark. 167; *Meyer* v. *Hart,* 40 Mich. 517); as against public policy as a penalty or forfeiture, (*Witherspoon* v. *Musselman,* 14 Bush (Ky.) 214; *Bullock* v. *Taylor,* 39 Mich. 137; *Bank* v. *Pateet,* 74 W. Va. 511, 82 S. E. 332; *Rixey* v. *Pearre,* 89 Va. 113); as tending to encourage litigation and oppress the debtor, (*Tinsley* v. *Hoskins,* 111 N. C. 340). That such a stipulation does not affect the negotiability of the instrument is now definitely settled by the Negotiable Instruments Law. See 12 MICH. L. REV., 225. As to whether the amount stated in the stipulation is conclusive of the amount that may be recovered for attorneys' fees in suit upon the note, in those states which do hold that such provision is valid and